U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENNY T. NICK and DEPARTMENT OF THE ARMY,
ARMY AMMUNITION PLANT, McALESTER, OK

Docket No. 00-453; Submitted on the Record;
Issued December 6, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met his burden of proof to establish that he sustained a cervical injury in the performance of duty on July 28, 1998.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a cervical injury in the performance of duty on July 28, 1998.

In February 1999 appellant, then a 54-year-old locomotive engineer, filed a traumatic injury claim alleging that he sustained a neck injury at work on July 28, 1998. Regarding the cause of injury, he stated, "I had my head leaning out [the] window to take signals and my neck popped."[1] In a statement dated March 14, 1999, appellant indicated that when he leaned his head and neck out the window of his locomotive on July 28, 1998 the train "made a hard joint on some boxcars and it kind of popped my neck." By decision dated April 1, 1999, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to show that he sustained a cervical injury in the performance of duty on July 28, 1998. By decision dated July 14, 1999, the Office denied modification of its April 1, 1999 decision.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential

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[1] Appellant did not stop work.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[7]

In support of his claim, appellant submitted an April 20, 1999 report in which Dr. Charles B. Fullenwider, an attending Board-certified neurosurgeon, stated:

> "It is my medical opinion based upon the history given to me by [appellant] that his present cervical complaints are a direct result of an injury which occurred on July 28, 1998 when his neck was injured during a hard coupling in the locomotive he was operating."[8]

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Fullenwider did not provide adequate medical rationale in support of his conclusion that appellant sustained an employment-related injury on July 28, 1998.[9] Dr. Fullenwider did not provide a diagnosis of appellant's condition, describe the implicated employment factor in any detail, or describe the medical process through which appellant could have sustained such an injury. He did not provide any findings on examination or diagnostic testing to explain his conclusion on causal relationship or explain why appellant's continuing cervical condition would not have been solely due to his preexisting degenerative cervical disc disease. Appellant submitted other medical reports regarding his condition but none of the reports contained an opinion that he sustained a cervical injury at work on July 28, 1998.

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[4] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[5] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *Elaine Pendleton*, *supra* note 3; 20 C.F.R. § 10.5(a)(14).

[8] Dr. Fullenwider also indicated that "it is most probable that his 35 years of repetitive use of his neck in this fashion is a contributing factor."

[9] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

After filing his traumatic injury claim, appellant suggested that he sustained a occupational cervical injury, *i.e.*, an injury which was sustained over the course of more than one day or work shift, due to repeatedly turning his head. However, appellant did not file an occupational disease claim in this regard or otherwise adequately articulate the factual basis for such a claim; the record does not contain a final decision of the Office regarding this matter.[10] Thus, this issue is not currently before the Board.[11]

The decisions of the Office of Workers' Compensation Programs dated July 14 and April 1, 1999 are affirmed.

Dated, Washington, DC
December 6, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[10] In report dated June 1, 1999, Dr. Brian Vickaryous, a Board-certified emergency medicine physician for the employing establishment, suggested that appellant sustained an occupational cervical injury. In reports dated March 23 and April 20, 1999, Dr. Fullenwider suggested that appellant sustained such an injury. However, these reports did not provide an unequivocal, rationalized opinion on causal relationship, a clear diagnosis, or a complete and accurate factual history. In a report dated March 17, 1999, Dr. Kenneth R. Miller, an attending Board-certified internist, indicated that he was unable to confirm that appellant sustained an occupational or traumatic injury.

[11] *See* 20 C.F.R. § 501.2(c).